

# TRANSCRIPT OF PROCEEDINGS

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of:

Kurtis J. Kintzel, Keanan Kintzel, and all entities  
by which they do business before the FCC

EB Docket No. 07-197

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DATE OF HEARING: \_\_\_November 15, 2007\_\_\_ VOLUME: \_\_\_1\_\_\_

PLACE OF HEARING: \_\_\_WASHINGTON, D.C.\_\_\_ PAGES: \_\_\_1-43\_\_\_

NEAL R. GROSS & CO., INC.  
1323 RHODE ISLAND AVENUE, NW  
WASHINGTON, D.C. 20005  
TELEPHONE (202) 234-4433

Before the  
Federal Communications Commission  
Washington, D.C. 20544

In the matter of: )  
 ) EB Docket No. 07-197  
Kurtis J. Kintzel, Keanan )  
Kintzel, and all entities by)  
which they do business ) File No. EB-06-IH-5037  
before the Federal ) FRN: 0007179054  
Communications Commission )  
 )  
Resellers of )  
Telecommunications Services ) NAL/Acct. No.  
 ) 200732080029

Room TWA365  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Thursday,  
November 15, 2007

The above-entitled matter came on for hearing,  
pursuant to notice, at 9:30 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL  
Chief Administrative Law Judge

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## APPEARANCES

On Behalf of the Commission

MICHELE LEVY BERLOVE, ESQ  
Enforcement Bureau  
Investigations and Hearings Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
(202) 418-1477

On Behalf of the National Association of State  
Utility Consumer Advocates

KATHLEEN F. O'REILLY, ESQ  
414 A Street, S.E.  
Washington, D.C. 20003  
(202) 543-5068  
kforeilly@dcaccess.net

On Behalf of Kurtis J. Kintzel, et al.

CATHERINE PARK, ESQ  
The Law Office of Catherine Park  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 973-6479  
contact@cparklaw.com

ALSO PRESENT

JUDITH LANCASTER, ESQ - FCC  
KURTIZ J. KINTZEL

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P-R-O-C-E-E-D-I-N-G-S

9:34 a.m.

JUDGE SIPPEL: We're on the record. Good morning. This is a -- our first pre-hearing conference and I'm just going to shorten the title by referring to it as the Kintzels and it's got a rather long heading in the Order to Show Cause. In any event, this is the first pre-hearing conference in Kurtis J. Kintzel, et al, which is EB Docket 07-197, Order to Show Cause, FCC 165 Release September 10, 2007. And I'm going to ask for my benefit if counsel would just please identify their appearances starting with counsel for Kintzels.

MS. PARK: This is Catherine Park appearing for the Kintzels.

JUDGE SIPPEL: Okay, thank you. And with you is --

MS. PARK: Kurtis Kintzel.

JUDGE SIPPEL: I'm sorry?

MR. KINTZEL: Kurtis Kintzel.

JUDGE SIPPEL: Thank you. You have to speak up a little bit. Okay, good morning, Mr.

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1 Kintzel.

2 MR. KINTZEL: Good morning.

3 JUDGE SIPPEL: And on behalf of the  
4 Bureau.

5 MS. BERLOVE: Michelle Levy Berlove.

6 JUDGE SIPPEL: And?

7 MS. LANCASTER: I'm just here as an  
8 assistant, your Honor, not of counsel.

9 JUDGE SIPPEL: Well, could you identify  
10 yourself?

11 MS. LANCASTER: Sure, Judy Lancaster.

12 JUDGE SIPPEL: And you're from the Bureau.

13 MS. LANCASTER: Yes, sir.

14 JUDGE SIPPEL: And you're here -- all  
15 right, well, you've stated it, that's fine. And on  
16 behalf of --

17 MS. O'REILLY: The National Association of  
18 State Consumer Utility Advocates, the Petitioner for  
19 party status, my name is Kathleen O'Reilly.

20 JUDGE SIPPEL: Good morning, Ms. O'Reilly.  
21 Then I can refer to that as NASUCA?

22 MS. O'REILLY: NASUCA, correct.

1 JUDGE SIPPEL: Okay. Is that okay, Mr.  
2 Reporter, NASUCA, N-A-S-U-C-A, all caps. Thank you  
3 very much. Let's make a note of this. Okay, I've got  
4 my own little list here that I want to go through and  
5 then, if I've overlooked something, you all can tell  
6 me.

7 Intervention; first of all, the  
8 intervention is being sought by NASUCA under Section  
9 223(b), 1.223(b) of the Rules and I'm just saying that  
10 because that's what's in your pleading. And I'm going  
11 to just summarize this for the benefit of myself as  
12 well as everybody else. What you need to show is an  
13 interest in this proceeding. You need to show an  
14 ability to be able to assist in the prosecution of the  
15 case, any proposed issues need to be raised and the  
16 decision is made by myself with full discretion.

17 So what I'm looking for as to whether or  
18 not you might help or may not help and how much you  
19 might help, help in the adjudication of the case, in  
20 the hearing of the case. That is my main concern.  
21 And you have -- I believe your petition has come in  
22 within 30 days of the publication of the -- in the

1 Federal Register; is that right?

2 MS. O'REILLY: That's correct.

3 JUDGE SIPPEL: Anybody have any different  
4 idea on that? No? Everybody is shaking their head,  
5 no. Okay. Let me just start with a series of  
6 questions, Ms. O'Reilly, and obviously, this is  
7 important because, if you're going to participate, you  
8 need to know that. If you're not going to  
9 participate, you need to know that, and then we can  
10 move on with the case. It seems like NASUCA is  
11 seeking to litigate state issues. Now, this is what  
12 I'm seeing, okay?

13 I've read the papers, this is what I'm  
14 seeing. I'm not saying that this is established.  
15 This is what I'm seeing. But it seems to me as though  
16 NASUCA is seeking to litigate state issues or issues  
17 that are primarily a state concern with some overlap  
18 with respect to slamming, et cetera, but basically  
19 what NASUCA is interested in is consumers on the state  
20 level and the enforcement of state interests as  
21 opposed to federal interests. Now, that's how I see  
22 it. You go ahead and educate me otherwise.

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1 MS. O'REILLY: There is somewhat of an  
2 overlap, your Honor, and because the show cause order  
3 has identified a number of instances in which  
4 allegations are specifically related to failure to  
5 comply with state law, for example, giving notice  
6 before ceasing operation, and because NASUCA, as an  
7 organization of state consumer advocates, a number of  
8 whom have actively participated in state proceedings  
9 which have investigated any variation of the Kintzels  
10 or their affiliates.

11 It is NASUCA's hope to be able to  
12 participate as a full party, so that, by being a part  
13 of discovery and cross examination and presenting  
14 witnesses, they can bring to the record additional  
15 evidence that supports those allegations that are in  
16 the show cause order that relate to state proceedings  
17 as well as NASUCA does represent ratepayers at the  
18 federal level. That's part of its charter, part of  
19 its mission and so, to the extent that NASUCA would  
20 also be bringing to the record evidence of complaints  
21 that relate to violations of the federal provisions on  
22 slamming and so forth, we see that as a complementary

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1 role to what the Bureau would be doing. And so in the  
2 context of being a full party as opposed to an amicus,  
3 we think that that is a vital role, and it's also  
4 consistent with the federal/state partnership that was  
5 envisioned in the Telecommunications Act.

6 Some of NASUCA members are actually within  
7 the Bureau's of state regulatory bodies. Others are  
8 within the State Attorney General's office that also  
9 does complaint handling and enforcement of state law  
10 on various telecommunications issues. So by way of  
11 summary, what NASUCA is seeking is to play a party  
12 role, not an amicus role, understanding full that the  
13 Bureau exclusively is prosecuting this case and has a  
14 role quite distinct from that of what NASUCA would be  
15 as a party.

16 And our interest is that the various  
17 charters, most of NASUCA members are agencies created  
18 by state government, by state law, and that charter  
19 designates that they are to be the ratepayer voice for  
20 ratepayers at the state level and the association that  
21 then encompasses the federal involvement of those  
22 state members is NASUCA as an organization.

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1                   And I should note that I am Washington  
2                   counsel to NASUCA, but I am basically a space-holder  
3                   at this juncture, that if NASUCA is granted party  
4                   status, and at the point that a hearing is set forth,  
5                   one or more of the attorneys from the state members  
6                   who have been deeply involved in proceedings related  
7                   to the Kintzels would be lead counsel and co-counsel.

8                   JUDGE SIPPEL: I appreciate that.

9                   MS. O'REILLY: And therefore, they have  
10                  had experience with state regulators dealing with many  
11                  of these same issues and have experience in having had  
12                  a hand in discovery, in cross examination, in moving  
13                  these issues forward and they are prepared to play  
14                  that role in this proceeding. And they would also be  
15                  relying on the assistance of at least another half a  
16                  dozen attorneys in other states that are NASUCA  
17                  members who, although not actually noting an  
18                  appearance and physically being here, would in a very  
19                  collaborative effort, make sure that NASUCA's presence  
20                  is one that brings as wide an assistance as possible.

21                  JUDGE SIPPEL: It sounds like you're  
22                  lining up a heck of a lot of resources to line up

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1       against the Kintzel parties in this case.

2               MS. O'REILLY: We have a very, very modest  
3       budget and very limited resources, but actually these  
4       are resources that have in -- that expertise has  
5       already been developed at the state level because of  
6       the proceedings that these attorneys have been in. So  
7       it's -- for NASUCA it is resource-intensive and we're  
8       eager for the proceeding to start so we can hopefully  
9       help in that way.

10              JUDGE SIPPEL: All right, you have not  
11       been asked by -- either directly or indirectly by the  
12       -- and I'm asking this as a question, by the  
13       Enforcement Bureau or any of the bureaus involved in  
14       this case at the Commission to participate; is that  
15       correct or am I not correct?

16              MS. O'REILLY: We have certainly not been  
17       asked to participate as a party. That's not an issue  
18       that's come up. We have provided the Commission  
19       through both the Consumer and Government Affairs  
20       Bureau and the Enforcement Bureau, the results of what  
21       has been going on in the states in terms of keeping  
22       them posted on what state regulatory bodies have

1 issued in the form of orders and various  
2 representative samples of complaints. But in terms of  
3 this proceeding, no, we have not been asked to be a  
4 full party.

5 JUDGE SIPPEL: So the Bureau has you, when  
6 I say "you", I mean collectively you, all these people  
7 that you've described, as a resource for potentially  
8 relevant evidence.

9 MS. O'REILLY: We believe so, but that's  
10 not our judgment to make as to whether the Bureau  
11 considers that a resource. That is what we would like  
12 to participate as.

13 JUDGE SIPPEL: Well, just hypothetically,  
14 let's -- I'm going to assume that I look upon it as  
15 being a resource. You know, it's a -- I don't know  
16 what the universe of the evidence might be, but the  
17 way you've described it, it's pretty broad and far-  
18 reaching, since you're going into a variety of states  
19 and with a variety of proceedings and -- I'm just  
20 taking your description.

21 I'm assuming that, as a hypothetical  
22 resource, and if the Bureau counsel intended to

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1 utilize it, NASUCA and its agents and whatnot would be  
2 cooperative.

3 MS. O'REILLY: Absolutely, particularly  
4 with respect to the state-specific allegations that  
5 are in the show cause.

6 JUDGE SIPPEL: All right. The second  
7 question I have and I will certainly -- Ms. Park, I  
8 want to go down these points and then you can respond.  
9 Is that okay?

10 MS. PARK: Yes, sir.

11 JUDGE SIPPEL: You should keep these in  
12 mind. Second is the relevant evidence in -- all  
13 right, well, I've already asked that question. Yes,  
14 you said, yes, that is, that you could make these  
15 available, the evidence available that you have if the  
16 Bureau should so request it.

17 Third, you've mentioned and your second  
18 proposed issue seems to be a challenge to the adequacy  
19 of FCC verification standards. Am I stating that --  
20 it's kind of a broad statement on my part, but am I  
21 accurately stating that?

22 MS. O'REILLY: It's very possible that

1       that will be folded into and embraced in what will  
2       already be the issues. We were just sort of using  
3       language that was in the original show cause order,  
4       but our focus is on the allegations that the Bureau  
5       intends to proceed with.

6               JUDGE SIPPEL: All right, but it sounds to  
7       me like -- it sounds to me like that's more of a rule  
8       change --

9               MS. O'REILLY: Exactly.

10              JUDGE SIPPEL: -- fodder for a rule change  
11       than for a litigated issue.

12              MS. O'REILLY: Exactly, but only to the  
13       extent that that is implicit in some of the language  
14       of the show cause order. We were playing  
15       conservative to put it in so that we would not waive  
16       our opportunity to have that, but NASUCA certainly  
17       agrees, your Honor, that that is anticipated to be  
18       part of a rulemaking in which the record of this  
19       proceeding could be very instrumental, and therefore,  
20       that really underscores why NASUCA, consistently eager  
21       for such a rulemaking, wants to insure that it is at  
22       least rolling up its sleeve and helping in every

1 effort to make this record as useful to the Commission  
2 as possible in a potential subsequent rulemaking  
3 proceeding.

4 JUDGE SIPPEL: All right, you've answered  
5 the -- better safe than sorry.

6 MS. O'REILLY: Right.

7 JUDGE SIPPEL: Okay. The last item I have  
8 or question to pose to you is, it seems to me that the  
9 predominance of the evidence that your petition  
10 focuses on that even though you've made reference to  
11 today, is evidence for the enforcement of state  
12 statutes with, as you said before and as I agree,  
13 there's some overlap, but isn't that essentially it?

14 MS. O'REILLY: It is, but NASUCA has been  
15 the federal -- has been the consumer voice at the  
16 federal level on slamming and other issues as well, so  
17 I would not want to suggest that it's exclusively  
18 state.

19 JUDGE SIPPEL: All right, okay. No, I --  
20 that's fine, that's fine. I -- but again, my -- be  
21 careful to -- I'm interested in evidence, I'm not  
22 interested in policymaking.

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1 MS. O'REILLY: Correct.

2 JUDGE SIPPEL: -- in here, in this  
3 courtroom.

4 MS. O'REILLY: As is NASUCA. No, we  
5 understand that fully, and that any policy issues  
6 would have to be taken up in a rulemaking proceeding,  
7 not here. We're very committed to that and understand  
8 that that line has to be honored.

9 JUDGE SIPPEL: All right, now, that's all  
10 I have in my questions. Ms. Park?

11 MS. PARK: Yes.

12 JUDGE SIPPEL: Do you want to respond to  
13 some, all or any of that?

14 MS. PARK: Yes, definitely. Our position  
15 is that they position themselves as a consumer  
16 advocacy group and there are only 10 slamming  
17 complaints that are part of the Order to Show Cause.  
18 I don't see why they need to be a party in order to  
19 participate in the litigation of 10 slamming  
20 complaints.

21 JUDGE SIPPEL: Is 10 -- is that a de  
22 minimus number, 10 slamming complaints?

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1 MS. PARK: It doesn't seem that many to  
2 me, your Honor.

3 JUDGE SIPPEL: All right, go ahead.

4 MS. PARK: Well, and you know, they can be  
5 easily deposed by the Enforcement Bureau. They can  
6 volunteer information. I don't see why they need to  
7 be granted full party status and tax our resources for  
8 discovery. I mean, they're going to propound numerous  
9 interrogatories, depositions, et cetera, putting, you  
10 know, enormous stress on our financial resources and  
11 it's difficult enough for us to defend against the  
12 Enforcement Bureau's many requests. We just think  
13 that, you know, for the sake of litigating 10 slamming  
14 complaints which can easily be taken care of by  
15 providing verification tapes or saying, well, the time  
16 period for providing those tapes, I guess it's like an  
17 18-month window that any carrier needs to maintain  
18 those tapes, I mean, if that window is past, then I  
19 mean, there's --

20 JUDGE SIPPEL: That's -- I hear you.

21 MS. PARK: Yes, so I mean, it doesn't seem  
22 like, you know, they need to be a party to just

1 litigate 10 slamming complaints which could easily be  
2 disposed of.

3 JUDGE SIPPEL: All right, I hear you.  
4 Does the Bureau want to wade in on this at all?

5 MS. BERLOVE: The Bureau is not taking any  
6 position. We think that the parties, that NASUCA and  
7 the Kintzels have briefed the issues, but your Honor,  
8 I just wanted to note, there was an additional motion  
9 filed this past Friday seeking leave to file an  
10 additional pleading by the Kintzels, and I just wanted  
11 to know whether you would like a response from us. We  
12 have a response prepared.

13 JUDGE SIPPEL: That's on my B list. I'm  
14 coming to that.

15 MS. BERLOVE: Okay.

16 JUDGE SIPPEL: I just got through the A  
17 list, but thank you, thank you. Don't hesitate to  
18 remind me.

19 MS. O'REILLY: Your Honor?

20 JUDGE SIPPEL: Yes, go ahead.

21 MS. O'REILLY: Could I briefly respond to  
22 Ms. Park's comments in terms of -- with all due

1       respect, we believe that the recent --

2                   JUDGE SIPPEL:   Don't go beyond what she  
3       said.

4                   MS. O'REILLY:   No, but the notion that  
5       there's only 10 complaints and NASUCA really doesn't  
6       have anything new to offer other than what they could  
7       do in an amicus status, I think that the  
8       characterization of what has happened at the state  
9       level as represented in the recent series of requests,  
10      and NASUCA's response has shown that NASUCA has been  
11      uniquely in a position to respond to those. And so,  
12      since credibility is going to be an issue in this as  
13      it would be in any such adjudicatory proceeding, I  
14      believe that NASUCA, in any role short of being a  
15      party, is going to be handicapped in its ability to  
16      insure that the record is accurately portraying what  
17      is happening at the state level, based on the  
18      attorneys, who on behalf of consumers, have been at  
19      the state level.

20                   And I think that, to expect the  
21      Enforcement Bureau, that has no reason to have had  
22      experience dealing with the state proceedings or to

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1 have to take on that extra load, that is where I think  
2 that NASUCA has already shown itself to have a unique  
3 and important role because the state proceedings are  
4 inseparable from what it is in the show cause order  
5 and with respect to a mere 10 slamming complaints, I  
6 think it's very clear from the order and from the  
7 records that that is illustrative and not at all  
8 intended to be the beginning and the end of the  
9 quantity of complaints that have been lodged against  
10 the Kintzels for violations of federal and state law.

11 JUDGE SIPPEL: All right. Let's move on.  
12 I'm going to take it under advisement. You can, you  
13 know, report back to your clients that they'll have a  
14 decision shortly, certainly before Thanksgiving.

15 Let's see, the Motion to -- what did I --  
16 oh, yes, additional facts, the Motion to File  
17 Additional Pleading which was filed by the Kintzels on  
18 11/9, that's denied. I have certainly more than  
19 enough information to decide this issue. And there's  
20 no need for an opposition pleading. Okay, now, was  
21 that your question, Ms. Berlove?

22 MS. BERLOVE: Yes, your Honor.

1 JUDGE SIPPEL: Okay, the next one is the  
2 Motion to Dismiss seriatim the Informal Requests that  
3 have -- and the motion was filed -- the Motion to  
4 Dismiss was filed by the Enforcement Bureau on the 7<sup>th</sup>  
5 of November and opposed on the -- am I reading that  
6 right? When was it opposed, on the 9<sup>th</sup>? It doesn't  
7 really make a lot of difference.

8 Well, I'm not going -- there has been the  
9 Motion by the Bureau and there has been an opposition  
10 filed by -- to the Motion filed by the Kintzels.

11 MS. PARK: Yes, we filed it yesterday.

12 JUDGE SIPPEL: Okay, that's right, I got  
13 it. I got it and I read it this morning.

14 MS. O'REILLY: NASUCA is prepared to file  
15 within the 10-day window from November 9<sup>th</sup>, but it is  
16 more than satisfied to have that ruling made without  
17 that filing.

18 JUDGE SIPPEL: Well, I'm trying to just  
19 see how much I can accomplish here. I've already  
20 issued an interim order on that.

21 MS. BERLOVE: Your Honor, if I may.

22 JUDGE SIPPEL: Go, please, yes, I want to

1 hear you.

2 MS. BERLOVE: The seriatim informal  
3 requests all pertained to the requests to file  
4 additional pleadings with respect to the Petition to  
5 Intervene. To the extent that you have ruled, you've  
6 denied --

7 JUDGE SIPPEL: Today.

8 MS. BERLOVE: -- right, you've denied the  
9 Motion to File Additional Pleadings --

10 JUDGE SIPPEL: Right.

11 MS. BERLOVE: -- which essentially relates  
12 back to all of those informal requests. To the extent  
13 that that Motion to File Additional Pleadings  
14 encompasses all of the informal requests that were  
15 made, we have no problem withdrawing that motion to  
16 dismiss the seriatim requests.

17 JUDGE SIPPEL: Well, I've already ruled on  
18 part of it, so the motion is in there. It's in the --  
19 it's in the record and I will clean it up with another  
20 order, but I agree with you that everything I think  
21 that needs to be covered by your concerns has been  
22 addressed either by my preliminary order or by what we

1       talked about this morning, today. In other words,  
2       their request to file additional papers in support of  
3       intervention has been denied.

4               MS. BERLOVE: Right, which makes the  
5       informal request at this point moot.

6               JUDGE SIPPEL: Okay. Well, all right,  
7       fine, and I'll treat it that way, but I'll take care  
8       of it on the record.

9               MS. BERLOVE: Thank you, your Honor.

10              JUDGE SIPPEL: But thank you very much.  
11       No, that's fine, that moves it right along. Okay,  
12       Item C, the Kintzels' motion to modify issues or in  
13       the alternative, statement of objections to the order  
14       to show cause. I think I should just, first, say up  
15       front that I'm assuming that counsel for Kintzel is  
16       aware that I have very, very limited jurisdiction over  
17       making changes to the -- I shouldn't say jurisdiction,  
18       really, but authority to make changes to a show cause  
19       order or a hearing designation order once it comes  
20       from the Commission or from a bureau by delegation  
21       from the Commission.

22              MS. PARK: I wasn't sure in terms of your

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1 authority, your Honor, so we submitted the motion to  
2 you so that you would rule to the extent that, you  
3 know, that's within your authority and then whatever  
4 we can't get addressed here, we probably should go  
5 directly to the Commission.

6 MS. BERLOVE: Your Honor, if I may, as we  
7 pointed out in our opposition to the Motion to Modify  
8 as it was framed, it was addressed to the Commission.  
9 It is currently pending before the Commission. I know  
10 that it is within the Office of the General Counsel at  
11 this point and, were you to issue a ruling on the  
12 Motion to Modify, it raised the potential for  
13 conflicting rulings. As I said, we opposed -- we  
14 filed our opposition to the Commission because any  
15 motion to modify is within your jurisdiction as  
16 opposed to the Commission's jurisdiction.

17 To the extent that you determine that this  
18 motion is, in fact, before you, rather than before the  
19 Commission, we would seek leave to file a substantive  
20 opposition to the motion.

21 JUDGE SIPPEL: Okay. Well, would the  
22 Commission take these questions up, as far as you



1 know?

2 MS. BERLOVE: We don't think that they  
3 should.

4 JUDGE SIPPEL: Okay. Well, and I've  
5 already -- now I also have another motion. This is  
6 becoming interesting, another motion, I believe by  
7 you, Ms. Park, that I should -- requesting me to rule  
8 on this --

9 MS. PARK: Yes.

10 JUDGE SIPPEL: -- and not the Commission.

11 MS. PARK: It's still our position that  
12 you should rule on it, your Honor, and then, whatever  
13 we can't get addressed at the hearing level, we'll  
14 refile before the Commission. I mean, I don't think  
15 that the Commission is going to take up that motion to  
16 modify either, because, you know, the Enforcement  
17 Bureau submitted an opposition which states that  
18 basically it's improper for this reason and that  
19 reason and you know, we don't want to waste our time  
20 arguing whether those procedural points were accurate  
21 or not.

22 We're willing to refile before the